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# HOW TO MAKE SMALL CLAIMS COURT WORK FOR YOU



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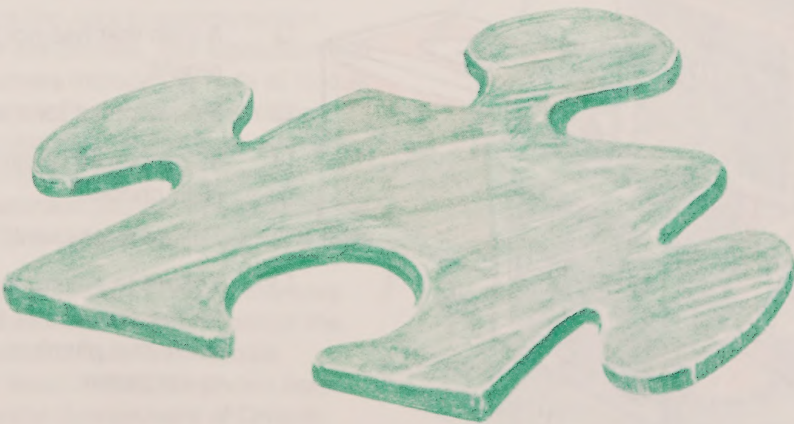
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# HOW TO MAKE SMALL CLAIMS COURT WORK FOR YOU

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## A STEP-BY-STEP GUIDE TO MAKING OR RESPONDING TO A CLAIM



# WHAT IS SMALL CLAIMS COURT FOR?

Small Claims Court is designed to give you a simple and inexpensive way to settle disputes concerning money or property.

Small Claims Court has limits on the size of claim — that is, how much money you can claim in damages or compensation in this court. These monetary limits change from time to time. If you aren't sure whether your claim is within these limits, please contact the nearest Small Claims Court office for this information.

Although Small Claims Court is a branch of the Ontario Court (General Division), its proceedings are much simpler, are less expensive and take less time than those in other General Division cases. In most cases, people can and do represent themselves before the Small Claims Court judge. If your problem is complex, though, or if you don't feel comfortable speaking for yourself, you have every right to bring a lawyer, law student or agent to help you.

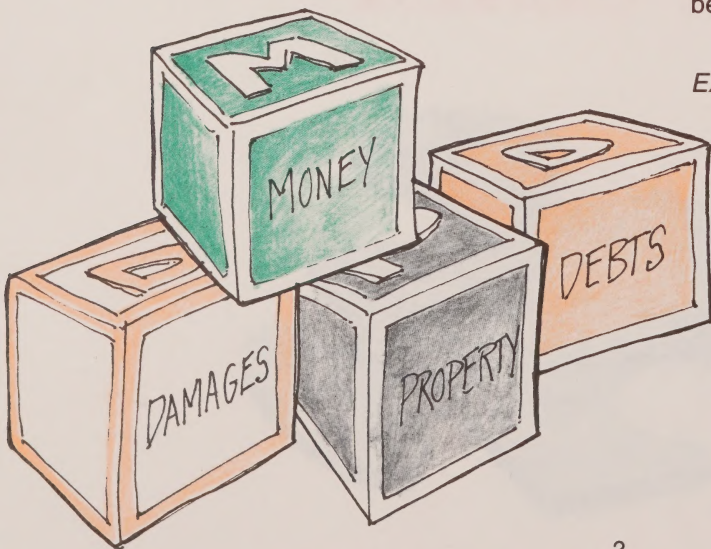
This brochure is a step-by-step guide to making or defending a claim in Small Claims Court. Throughout the brochure, you will see words in brackets ( ). These are terms you will hear and use as you proceed with a claim. We explain what all of these important terms mean at the back of the booklet. Understanding them will help you feel comfortable and confident as you prepare to go to court.

After reading this brochure, if you still have any questions, please call the Small Claims Court nearest you. You will find the telephone number in the Blue Pages of your phone book, in the Ontario Government section under Ministry of the Attorney General.

## WHAT KINDS OF CLAIMS ARE DEALT WITH IN SMALL CLAIMS COURT?

### 1. A CLAIM FOR MONEY OWED TO YOU

In a claim of this kind, the amount of money owed to you (the PLAINTIFF) will usually arise from a written contract or oral agreement between you and the other party.



*Examples of this kind of claim include:*

- ☐ A loan that has not been repaid;
- ☐ Money owed for merchandise;
- ☐ Money owed because of an NSF cheque;
- ☐ Failure to pay rent;
- ☐ Failure to pay for work done or for the services of a contractor such as a plumber, electrician or carpenter.



**2. A CLAIM FOR MONEY LOSSES CAUSED BY THE IMPROPER ACTIONS OF ANOTHER PERSON (DAMAGES)**



The person making such a claim (the PLAINTIFF) must prove to the judge that a loss they have suffered was caused by the actions of another person (the DEFENDANT).

*Examples of this kind of claim include:*

- ☐ Damage to property caused by someone else's fault or negligence;
- ☐ Property damage caused by faulty service, such as damaging goods during transportation or delivery, or clothing damaged during dry cleaning;
- ☐ The delivery of goods or services that aren't up to the standard or quality agreed on by the seller and the buyer;
- ☐ Failure to fulfill the terms of a written or oral contract;
- ☐ Damages due to personal injury.

**3. A CLAIM FOR THE RETURN OF YOUR PERSONAL PROPERTY NOW IN THE POSSESSION OF ANOTHER PERSON**

The person bringing this kind of claim to court (the PLAINTIFF) has to prove to the judge that property now in the possession of another person does rightfully belong to the plaintiff and how much it is worth.

**WHAT LAWS PROTECT YOU AS A CONSUMER?**

There are a number of important pieces of legislation in Ontario that set out the rules of business conduct for buyers and sellers and give consumers the right to compensation when the rules are broken. The legislation that protects consumers include the Sale of Goods Act, the Consumer Protection Act and the Business Practices Act. These laws also give customers the right to have their money returned if a business has not dealt with them properly or if the business has broken the law.

If you want more information about the laws that protect consumers, you can contact the Ministry of Consumer and Commercial Relations. It is listed in your telephone book Blue Pages, under Government of Ontario.



# WHO WILL HELP ME IN SMALL CLAIMS COURT?

In every Small Claims Court there are people who will explain how you:

- ☐ File a claim;
- ☐ Submit your defence to a claim filed against you;
- ☐ Get a judgment or order enforced by the court.

If you are thinking about starting a court action, you may first wish to talk to a member of the court staff.

A member of the court staff will:

- ☐ Explain generally how to fill out the right forms;
- ☐ Arrange for delivery (SERVICE) of your claim to the defendant;
- ☐ Explain how you summon witnesses you want to have testify for you; (SUMMONS TO WITNESS), or
- ☐ Direct you to the right court, if necessary.

The staff can't provide you with any legal advice. They also cannot fill out forms for you.

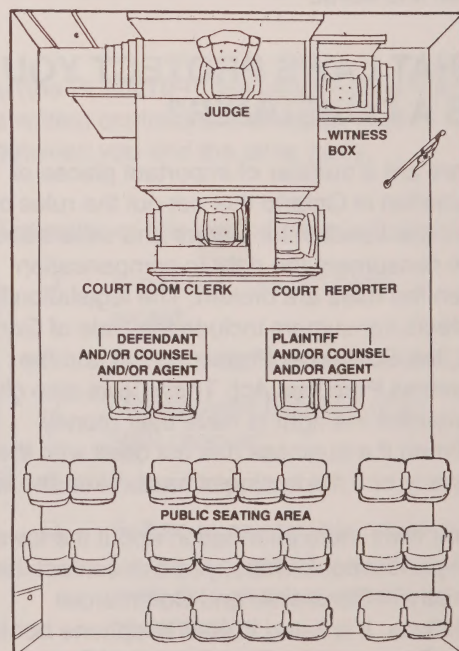
The **COURT PROCESS OFFICER** (formerly known as the bailiff) is the court official who delivers legal documents, such as claims to defendants and summonses to witnesses.

The **COURT ENFORCEMENT OFFICER** (formerly known as the bailiff) is the court official responsible for enforcing the terms of an order or judgment when instructed by the court.

The court **REFEREE** helps to work out a plan for repayment to the person who is owed money (the CREDITOR) and the person who owes the money (the DEBTOR). If a debtor has more than one Small Claims Court judgment against him or her, the referee will sometimes help to arrange an affordable payment plan.

The referee also holds pre-trial hearings which can bring both sides of a lawsuit together to assist them in trial preparation and to see if a trial can be avoided.

The **JUDGE** who sits in the Small Claims Court is responsible for hearing disputes between the parties. The judge listens to the arguments and evidence presented by both sides and then makes a decision on the claim. Judges also conduct hearings before and after the trial, known as motions, pre-trials and judgment debtor examinations. What happens at these hearings will be explained later in this brochure.





# HOW DO I FILE A CLAIM?

## WHERE DO I GO?

There are Small Claims Courts in different locations across Ontario. You must file your claim in the office in the area where one of these conditions applies:

- ☐ Where the problem occurred (the location of the CAUSE OF ACTION);
- ☐ Where the party against whom the claim is filed (the DEFENDANT) lives or carries on business;
- ☐ Where the court's place of sitting (COURTROOM) is nearest to where the defendant lives or carries on business.

## HOW MUCH TIME DO I HAVE TO FILE A CLAIM?

Specific kinds of claims have to be filed within a certain length of time after the event occurred. The period of time in which a claim must be filed is called the limitation period.

The counting of time during which court action can be started usually begins on the day when the problem took place (the date of the CAUSE OF ACTION). If you aren't sure about the limitation period that applies to your case, you should consult a lawyer.

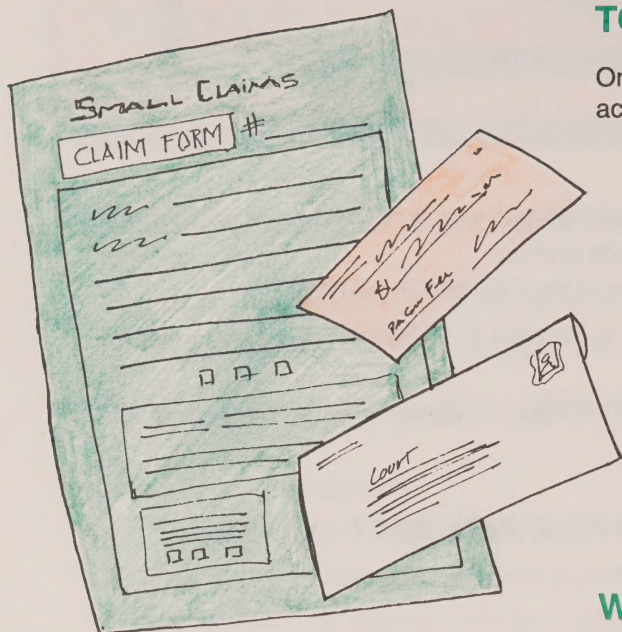
## HOW DO I GET STARTED?

Your first step was choosing the right Small Claims Court in which to file your claim. Your next step is to pick up the right form to start your court action. You can pick up this form at any Small Claims Court. Once the form is completed, however, you will have to mail it or take it in person to the correct court.

When you file your claim, you will have to pay a court fee. This fee is for the cost of handling your claim and delivering it to whomever you are suing. The amount of the fee you pay varies with the amount of money you are suing for, the number of defendants who have to be served with your claim and the distance between the court office and the location(s) where the claim is served on the defendant(s).

Any fees you have to pay are added to your claim by the court. Then, if you win your case, the judge may add this amount to the money you are entitled to collect.





## WHAT INFORMATION DO I NEED TO FILE A CLAIM?

On a claim form, you must write clearly and accurately:

- ☐ Your full name, address, postal code and telephone number;
- ☐ The full name and address of every person you are suing;
- ☐ If the address is a rural route, you should supply the lot and concession number;
- ☐ The amount of money you are claiming;
- ☐ A short, clear summary of the events that took place and the reasons you think you are entitled to your claim.

## WHAT INFORMATION DO I HAVE TO INCLUDE ABOUT THE DEFENDANT?

- ☐ If the claim is against an individual, include the defendant's full given name and address, apartment or unit number and postal code.
- ☐ If more than one party is named in your claim, you will also have to include each person's full name and address so the court process officer can deliver the claim to them.
- ☐ If you are suing an incorporated business (it usually has an Inc. or Ltd. after its name), make sure you have the correct business name, address and postal code. If you want a specific company officer to be served, include their name and position in the company.
- ☐ If the business you are suing is not incorporated (a sole proprietorship or partnership), you will need the correct name of the business and the address for service. Alternatively, you may wish to serve notice on the proprietor or partners, or name them as parties. The court office can explain these choices to you.

If you need the correct name and address of a corporation or an unincorporated business, you can write to:

**Ministry of Consumer and Commercial Relations  
Companies Branch  
393 University Avenue, 2nd floor  
Toronto, Ontario M7A 2H6  
Attention: Corporate Services  
Telephone: (416) 593-8880**

For a name and address of a small business that is not incorporated, or for a partnership, write to the Ministry at the address listed above, but to:

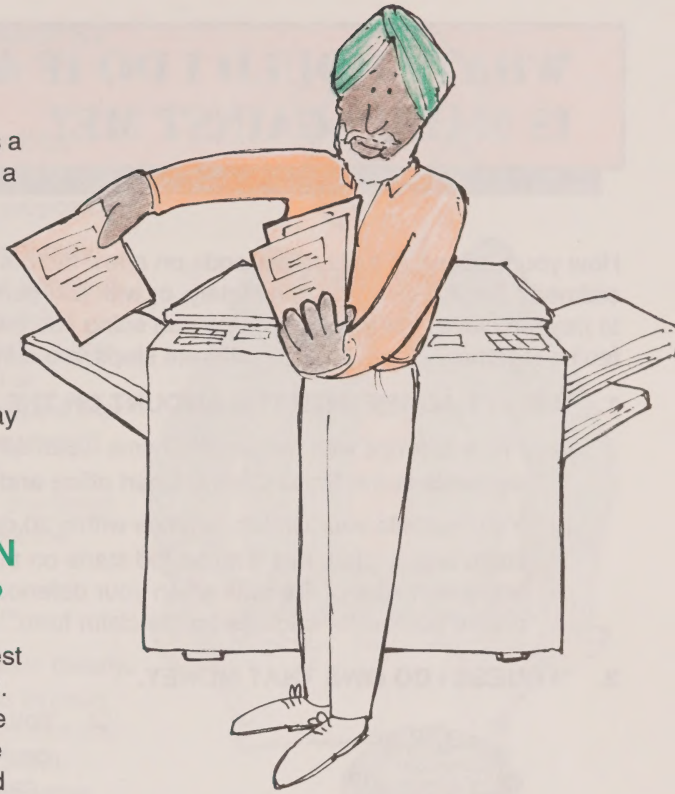
**Attention: Information Services Section Telephone: (416) 593-8880**

A small fee will be charged for supplying this information to you.



## WHAT DOCUMENTS DO I INCLUDE WITH MY CLAIM?

If your claim is based on a document such as a bad cheque, a promissory note, a contract or a receipt, you have to file copies of the documents with your claim. At least two copies of each document will be needed if you are suing a company. Three copies are required if you are suing an individual. Be sure and bring the originals to the trial. If any documents are lost or not available, say so in your claim and explain why they aren't attached.



## CAN I ASK FOR INTEREST ON THE MONEY I AM CLAIMING?

If you want interest, always ask for the interest in addition to the debt you hope to have paid. The rate of interest you can collect may have been agreed upon by the parties or if no rate has been agreed upon, you may be awarded an amount set by law or by the judge.

If you win your case, you may be awarded interest from the date the payment was originally due. You can also collect interest from the date of a judgment in your favour until payment is made in full.

## CAN I MAKE A CLAIM IF I AM UNDER 18?

A person under 18 may make a claim, without an adult representing them, for up to \$500. If a minor is suing for more than \$500, an adult must act on their behalf (LITIGATION GUARDIAN). This adult, who is usually a parent or guardian, must file a form with the court consenting to be a litigation guardian. A clerk will explain how to fill out this document.

## CAN I SUE FOR MORE THAN THE SMALL CLAIMS COURT LIMIT?

Small Claims Court has monetary limits. As of April 1, 1993, the limit is \$6,000 across the province of Ontario.

If the amount of your claim is more than the current limit, you may still choose to use Small Claims Court because it is simpler and less expensive. However, you will have to give up any attempt to regain more money than the Small Claims Court limit. You also give up any right to regain this money in any other court.

You also cannot divide the amount of money you are claiming, to try to recover it in separate cases. You cannot, for example, divide a \$6,500 claim into a \$6,000 claim and a \$500 claim to be dealt with in a second case. If you believe you are owed an amount higher than the Small Claims Court limit and you want to try to recover all of it, you will have to take your case to a higher level in the Ontario Court (General Division). Almost everyone uses a lawyer there.



# WHAT SHOULD I DO IF A CLAIM IS MADE AGAINST ME?

How you respond to a claim depends on a few factors. Do you agree you owe the money claimed? Do you disagree completely, or with just part of the claim? If you agree, can you afford to pay the claim? Do you feel the person suing you owes *you* money, or that it's someone else's fault altogether? These are the different steps you can take:

## 1. "I DON'T AGREE WITH THE AMOUNT OR THE FACTS OF THE CLAIM."

- ☐ File a defence with the Small Claims Court office, in person or by mail. A defence form is available at the Small Claims Court office and there is no charge for filing it.
- ☐ You must file your written defence within 20 days after being served with the claim. If the claim was mailed, this time period starts on the fifth day after the date of the postmark. If you aren't sure of the date when your defence is due, contact the court office at the phone number or address on the claim form.

## 2. "I GUESS I DO OWE THAT MONEY."



- ☐ You will have to pay the amount specified in the court claim plus interest and court costs, which can vary.
- ☐ To avoid a judgment, pay this total to the court office within 20 days of receiving the claim. The court then sends this money to the person who made the claim.
- ☐ When you follow these steps, you avoid having a judgment made against you which could affect your credit rating.
- ☐ See Item 4

## 3. "I ONLY OWE PART OF WHAT THEY SAY I DO."

- ☐ If you feel you only owe part of the money mentioned in the claim, you can file a defence only for the part you feel you do not owe.
- ☐ Pay the court the amount you agree you owe. Then the Small Claims Court trial will only be for the amount that is still in dispute.
- ☐ See Item 4

## 4. "I DO OWE THEM MONEY, BUT I JUST CAN'T PAY IT NOW."

- ☐ Within 20 days following service of the claim on you, you must file a defence indicating the amount which you admit to be owing and setting out how you propose to repay the plaintiff. A copy of the defence will be mailed by the court office to the plaintiff.
- ☐ If the plaintiff is in agreement with your offer, no further proceedings may be taken provided you make the payments. If the plaintiff does not agree with the terms of your proposal, the plaintiff must, within 20 days of receiving a copy of your defence, request the court to set up a hearing.
- ☐ All payments should be made to the plaintiff or the plaintiff's representative. Where a



hearing has been requested by the plaintiff but has not yet taken place, you should still continue to make payments.

- ☐ At the hearing your financial position will be reviewed, following which the court may make an order which could differ from your proposal.
- ☐ If you don't attend the hearing, judgment may be entered against you for the amount admitted to be owing without any consideration being given to your offer of payment. Similarly, if you default in making any of the proposed or ordered payments, the plaintiff may request that judgment be entered against you. The plaintiff may then use any of the enforcement procedures permitted by the Rules of the Small Claims Court to immediately recover all the amount still owing.



#### **5. "I DON'T OWE THEM... THEY OWE ME!"**

- ☐ When you file your defence form, explain clearly why you believe the person taking you to court owes you money and state the amount that you believe is owed to you (COUNTERCLAIM). Prepare this counterclaim following the same guidelines given for filing an original claim. There is a fee for filing a counterclaim, which depends on the amount of your counterclaim.
- ☐ When you go to court, the judge will usually give you the chance to present your counterclaim as part of the same trial.

#### **6. "IF I AM FOUND RESPONSIBLE SOMEONE ELSE IS RESPONSIBLE TO ME."**

- ☐ If you feel that someone else should pay you if you have to pay the plaintiff you should file a claim with the court against the party you feel owes you compensation (THIRD PARTY CLAIM). Use the third party claim form provided by the court office. You will have to pay a fee to file this claim.
- ☐ In your third party claim, you should clearly outline:
  - why the plaintiff is suing you;
  - the reasons you believe the third party is responsible to you, if you are found responsible to the plaintiff;
  - the amount of the original claim you feel the third party is responsible for;
  - the full name, address and telephone number of the third party.
- ☐ Attach your relevant documents to the claim. The court will deliver copies of this claim to the person named and to everyone else in the case who has filed either a claim or a defence.

**7. “I WISH TO MAKE A CLAIM AGAINST A PERSON OTHER THAN THE PLAINTIFF, ARISING OUT OF OR RELATED TO THE PLAINTIFF’S CLAIM.”**

- ☐ As in item 6 above you must file a third party claim against the person that you feel owes you money in respect of a claim arising out of or in relation to the plaintiff’s claim.
- ☐ In your third party claim you must clearly set out:
  - the full name and address of the person that your claim is against;
  - the amount of money that you are claiming;
  - how your claim relates to the plaintiff’s claim;
  - the detailed reasons for your claim against the third party.
- ☐ Attach any relevant documents to your claim.
- ☐ The court will deliver copies of your claim to the person named and to all other parties who are entitled to a copy. Your claim will be heard at the same time as the plaintiff’s claim unless a judge orders otherwise.

**8. “I DON’T THINK THIS COURT CAN HEAR A CLAIM AGAINST ME.”**

- ☐ If you feel that the local court office in which the claim was filed does not have authority to hear the case, file a defence stating the reasons why. These reasons could be that:
  - the amount exceeds the Small Claims Court limit;
  - the court is not located where the events took place or where you live or carry on business.

**Do not, for any reason, ignore a claim. If you do not respond, the cost of each step the claimant takes may be added to any judgment against you.**

## **WHAT HAPPENS IF I DON’T FILE A DEFENCE?**

If you don’t file a defence within the time limit allowed (see Section 1), the clerk may sign a default judgment against you or note you in default without any prior notice.

If the suit being brought against you is for damages and you have been noted in default, a judge may assess a monetary value for the damages and enter judgment against you in your absence. A default judgment usually includes an award of interest, if it has been requested in the claim, and costs. After obtaining a default judgment, the person making a claim against you can immediately start enforcement proceedings against you.

If you didn’t file a defence within the time limit, but still wish to do so, and you have been noted in default or a judgment has been entered against you, you can still file your defence if you can give good reasons for the delay. You can try to obtain the written consent of the plaintiff to set aside the judgment or noting in default. If consent is refused, you can ask a judge, by filing a motion stating the reasons why you failed to file your defence within the time limits.



## WHAT IS A MOTION?

A motion is a procedure which is used when you want a judge to make an order. For example when you want to:

- ☐ Set aside a judgment made against you when you didn't file a defence or appear at trial;
- ☐ Add someone else as a party in the case or change the name of a person suing or being sued;
- ☐ Increase the amount you are claiming or change something that you said in your claim or defence; or
- ☐ Release a garnishment or stop some other form of enforcement process against you.

## HOW DO I MAKE A MOTION?

You must first attend the court office and obtain and complete the necessary forms (NOTICE OF MOTION and AFFIDAVIT IN SUPPORT OF MOTION). The notice of motion will set out the date, time and place of the hearing. This information must be obtained from the court office. The affidavit will set out the details of the order that you wish the court to make and the reasons why you feel that the order should be granted. You must swear or affirm that the information contained in the affidavit is true.

The notice and affidavit must then be given to (served on) the other side at least seven days before the date of hearing (12 days if sent by mail). The court office will explain the methods of service. The original notice and affidavit must then be filed with the court together with proof of service prior to the hearing. In most instances the court will charge a filing fee.

## CAN I SETTLE A CLAIM AGAINST ME BEFORE THE TRIAL?

Yes you can! Settling before the trial will save time and money. A settlement can be reached through either a written or an oral agreement. An effort to settle out of court can be started by either the plaintiff or the defendant. If the offer is accepted, the matter is over. If it is not accepted, the case will go to trial as planned.

A written offer to settle a claim outside of court received by the other party at least seven days before the trial that is not accepted can also mean you may be awarded extra costs by the judge.

For example, if the plaintiff has their written offer to settle rejected by the defendant, and they win a judgment, they may also be awarded up to twice the court costs, including certain lawyer's fees. If the plaintiff is unrepresented, they may be awarded an inconvenience cost. This would happen if the judgment they win is higher than or equal to the settlement offer.

A defendant whose written offer to settle is not accepted may also be awarded up to twice the normal court costs. This would happen if the amount awarded to the plaintiff is equal to or less than the settlement offer made by the defendant.

If a written offer to settle out of court is accepted, but the terms for payment are not met, the person who was to receive the settlement can ask the court for a judgment in the terms of the offer or they can continue to trial for the original amount claimed.

The cost consequences listed above do **not** apply to oral offers to settle.

# HOW DO I GET READY FOR MY DAY IN COURT?



## IS THE PRE-TRIAL CONFERENCE IMPORTANT?

The purpose of a pre-trial meeting is to bring both sides together in an informal setting. The judge or referee tries to define or narrow the disagreement and resolve the problem before the trial begins. They help the parties understand the factual and legal problems and make sure that each side will know what the other side will bring to or say at the trial through witnesses or documents. They also try to see if there is any way the dispute can be settled without going to a formal trial.

A pre-trial conference can be requested by either party in the lawsuit or may be ordered by a judge. It is very important to attend this meeting.

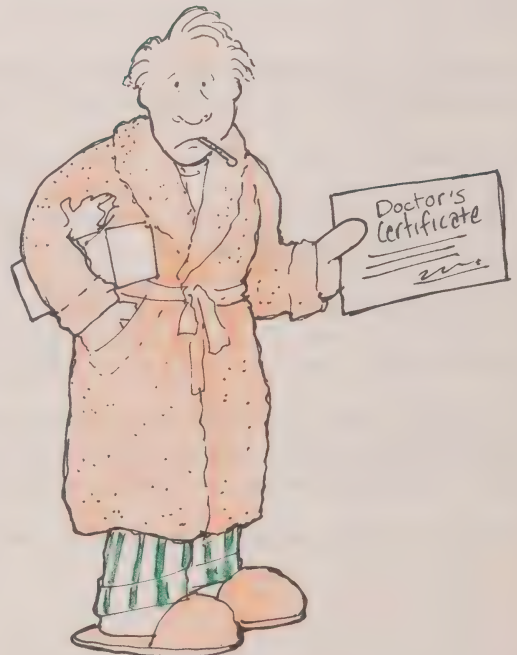
Although witnesses do not attend a pre-trial conference you should bring all your documents.

If no agreement can be reached at this time, a trial date will be set to hear the claim. The trial date, time and location will be mailed to you.

## WHAT IF I CAN'T ATTEND THE PRE-TRIAL OR TRIAL?

When you get the notice of the date for the pre-trial conference or trial you may already have made other important arrangements. If you can't, for a good reason, come to the hearing or trial, you must get the court's approval to change the date (AN ADJOURNMENT). If you don't appear, the court can award severe costs or penalties against you for not being there or for wasting the other side's time. In some circumstances, if the plaintiff fails to attend the court may dismiss the claim or a defendant who fails to attend may have a judgment made against him or her.

Be sure to tell the other side what is happening. Try to get their consent, preferably in writing, to the adjournment. If the other side does not consent someone may have to appear in court so the judge can decide what to do. If there is enough advance notice and an adjournment is granted, the court will usually try to set a date when everyone can be present.





You should contact the court office. They will advise you of the exact procedures you must follow if you are unable to attend a pre-trial or a trial and wish to obtain an adjournment.

## WHAT EVIDENCE DO I NEED TO SUPPORT MY CASE?



A case is decided by evidence presented at the trial. The kind of evidence you need to support your case can include:

- ☐ Testimony of witnesses;
- ☐ Documents, invoices, receipts or contracts;
- ☐ Photographs or drawings;
- ☐ Expert opinion.

When you receive notice of the trial, contact all the witnesses you want to give evidence on your behalf. Let them know the date, time and place of the court case. Be sure that they are prepared to spend the whole day in court. Your case could be called at any time on the day of the trial.

## WHAT PROOF DO I NEED AT THE TRIAL?

The best evidence is from witnesses in court who know what happened. The plaintiff needs to bring whatever witnesses and documents it takes to prove the other side is responsible and that the amount claimed is reasonable. The defendant must prove

the opposite. You can prove your case by witnesses in court telling what they know or by documents they wrote.

If you tell the judge what was said, or show a document that was written by someone who is not in the courtroom the judge may accept or refuse to accept this type of evidence (HEARSAY). The weight given to hearsay evidence, if it is accepted, is up to the judge.

If you can't bring the witness who made the statement or wrote the document to court you may serve copies of the statement or document on all parties in the case. The name and address of the person who wrote the document must be included. If these documents are delivered to the other side at least 14 days (19 days if sent by mail) before the trial the court can accept the statements.

If you have received such a document from the other party, and you want to question the writer in court (CROSS-EXAMINE), you must summon the witness and notify all other parties that you did.



# HOW TO ARRANGE FOR YOUR WITNESSES TO ATTEND

When your trial date is set, you will want as soon as possible to arrange for your witnesses to attend the trial. If someone does not want to testify on your behalf, you will have to request the court to issue a notice (SUMMONS TO WITNESS) requiring them to attend. This will also be proof to an employer, who must allow an employee to attend court during work hours.

You will have to pay a fee to the court for the summonses and you will also have to pay a witness fee and travelling expenses to anyone you want to attend. You may be able to recover these fees from the other party if you win your case. You may serve the summonses yourself, or have the court serve them on your behalf.

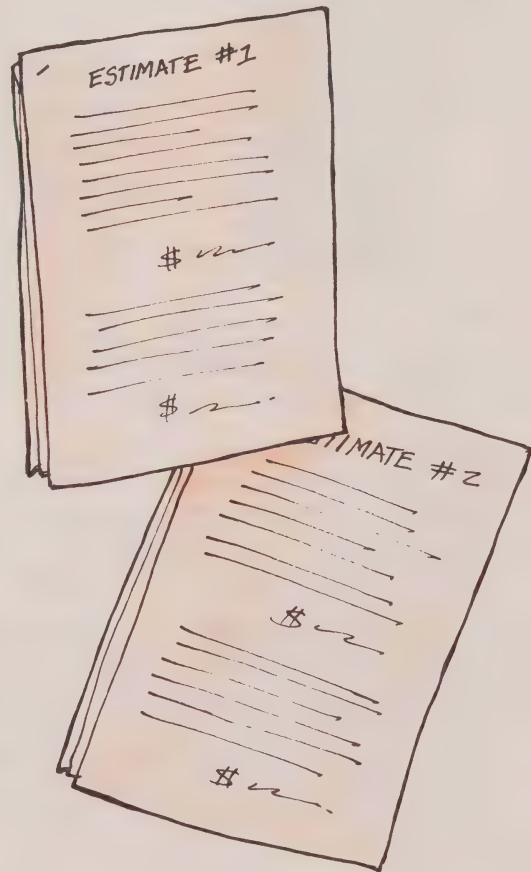
Before the trial it is wise for you to discuss with your witnesses the evidence they will be presenting. After you talk over the facts, you will be able to prepare your questions and decide on the best order for your witnesses to appear before the court. Talking to the witnesses is smart... and necessary. However, any attempt to influence them to say anything but the whole truth is illegal.

## HOW DO I PROVE A CLAIM FOR DAMAGES?

One of the problems you can resolve in Small Claims Court is a claim for damages caused by such things as accidents or poor quality work. As you prepare your case for trial, it will help if you have at least two estimates for:

- ☐ What needs to be done and what it will cost to complete work that has not been finished;
- ☐ What needs to be done and what it will cost to repair work that is faulty;
- ☐ What it will cost to repair or replace damaged property.

The two estimates are recommended as added proof that your claim for damages is fair and reasonable. If you have already had the property damage repaired, it is best to submit copies of the repair estimates or the invoices themselves to the court office when you file your claim. They can then be served along with your claim. The judge may also want the person who prepared the estimates or did the repair to appear in court for the trial.





# WHAT HAPPENS AT THE TRIAL?

## WHAT SHOULD I DO WHEN I ARRIVE AT THE COURT?

After you arrive, at the time shown on your notice, check the list outside or with the clerk at the front of the courtroom and take a seat in the courtroom until your case is called.

When your name is called, walk to the front of the courtroom, state your name and take a seat at the table in front of the judge's bench.

The person making a claim (PLAINTIFF) sits on the right. The defendant sits on the left. The courtroom clerk, and sometimes a court reporter (who keeps a record of the hearing), will be seated in front of you. The witness stand is beside the judge.



## HOW DO I PRESENT ALL THE FACTS ABOUT MY CASE TO THE JUDGE?

The person filing the claim (the PLAINTIFF) has to prove the case on what is called the BALANCE OF PROBABILITIES. This means the plaintiff has to prove to the judge that the events took place, more likely than not, in the way the plaintiff stated. The defendant must show that their version of events is more likely to have taken place than the case presented by the plaintiff.

# HOW TO GIVE EVIDENCE

You may be the only person speaking for your side, or you may have witnesses too. Whether you have witnesses or not, you will still want to present your own evidence.

- ❑ When you give evidence, you enter the witness box and take an oath or affirmation that what you are about to say is true.
- ❑ Speak in a direct manner. Start at the beginning and tell the judge the facts in the order that they occurred. Try to avoid repeating yourself or adding details that don't matter to your case. The judge may ask questions to help clarify your testimony or to get a further explanation of what happened. You can bring notes to refer to, but you cannot read these notes as your evidence.
- ❑ When you have finished giving your evidence, your opponent or their representative will be given the chance to question you. This questioning is called **CROSS-EXAMINATION**. Its purpose is to point out any factual errors or inconsistencies in your evidence. Your opponent will try in this way to create doubt about the accuracy of your testimony.
- ❑ When it is your turn to cross-examine the other side's witness, you will have the chance to ask questions. The judge will control any cross-examination to make sure a witness is not being harassed. The judge won't allow you to argue with a witness or use this opportunity to tell your side of the story.
- ❑ If you have any documents such as contracts, receipts or cancelled cheques you want to use as evidence, present them while you are giving your evidence on the witness stand. This evidence will then be taken from you and marked as exhibits. You can refer to exhibits as you present your case. This evidence will not be returned to you until 30 days after the trial and you will have to apply to the court office to have it returned.
- ❑ After both the plaintiff and the defendant have presented their evidence, each side will have the chance to quickly summarize their case and make a final argument.



## WHAT IS THE JUDGMENT?

The judgment, or order, is the decision of the judge, which usually states that one side in the case is entitled to receive a certain sum of money from the other. This amount may include interest, court costs, or both. If the defendant has made a **COUNTERCLAIM**, and the facts presented support this counterclaim, the judgment may state that the plaintiff owes the defendant money. The judgment is the final decision in a court case. It is not a guarantee of payment.

Usually, a judge in a Small Claims Court will give an oral judgment right after both sides have finished presenting their cases. Sometimes, however, the judge may want more time to review the facts or the laws which apply to the case. If the judge postpones a decision until later (**RESERVES JUDGMENT**), a copy of the judgment or final order will be mailed to each party when a decision is made.



## CAN I RECOVER THE FEES I HAD TO PAY TO GO TO TRIAL?

As you prepared your case for trial, you had to pay a fee to the court office before many of the necessary steps were carried out. If you win your case, you may be entitled to recover much of this money from the losing party. The money you can get back covers court costs and certain witness fees.

If you used a lawyer and also won a case for more than \$500, the court may award a counsel fee of up to \$300 to go towards your lawyer's fee. If you were represented by a law student, the maximum you can receive is \$150. If you were not represented by anyone else and you were successful in a claim over \$500, the court may award you up to \$300 as compensation for inconvenience and expenses — if the judge feels the losing party made the case more complicated or time-consuming than was necessary. The court may also allow the successful party up to \$30 for preparation and filing of the necessary documents.

The decision to award costs is made by the judge alone.

## CAN I APPEAL A JUDGMENT?

If you feel the judgment made by the court is wrong you can appeal to the Divisional Court. You can in limited circumstances ask for a new trial.

## HOW TO ASK FOR A NEW TRIAL

A motion for a new trial must be started within 30 days of the original trial. Grounds for requesting a new trial include:

- ☐ The plaintiff or defendant could not appear at the first trial, through no fault of their own;
- ☐ An important and relevant piece of evidence, such as a lost cheque or receipt, only became available after the end of the trial;
- ☐ The name or address of a witness whose evidence might have been crucial to the case only became available after the trial ended.

To request a new trial, you must file a notice of motion.

## HOW TO MAKE AN APPEAL

You can make an appeal to the Divisional Court if the amount of money involved is more than \$500. You have no right to appeal a decision when the amount is less than \$500.

An appeal of a judgment is generally considered if the judge made an error in law or fact, for example, if you raise a significant question of law concerning the case or if one of the parties feels the judge's decision was contrary to the weight of evidence. An appeal must be commenced within thirty days from the date of the judgment.

An appeal to a higher court is much more difficult and far more costly than a case in Small Claims Court. If you want to make an appeal, you may wish to seek legal advice before you begin.

You must deliver your notice of appeal to the Divisional Court within 30 days after the judgment made by the Small Claims Court. An appeal to a higher court is much more difficult and far more costly than a case in Small Claims Court. If you want to make an appeal, you should get legal advice before you begin.

# I WON... BUT HOW DO I GET MY MONEY?

Sometimes when you win a judgment in Small Claims Court, the person who owes you money will pay it promptly, or make arrangements for payment with you which are then followed. At other times, the person who has been ordered to pay ignores the order... they won't or can't pay.

It is then up to you to take the steps needed to enforce an unpaid judgment. The court staff will explain the enforcement options. They cannot, however, proceed until you give clear written directions and also pay the necessary court fees. These fees are recoverable when you collect on the judgment.

The enforcement steps taken by you will depend mainly on the information you have about the debtor's assets and ability to pay. Money in a debtor's bank account or a percentage of a debtor's wages can be seized by way of garnishment. Assets such as cars can be seized and sold and a lien can be placed on land owned by the debtor. You have to supply the court with the necessary information to take these steps on your behalf. If you do not have any information about the amount of money, property and investments owned by the debtor (ASSETS), as well as the amount owed by them to other people, this information may be obtained by way of examination of the debtor.

## THE OPTIONS FOR ENFORCEMENT

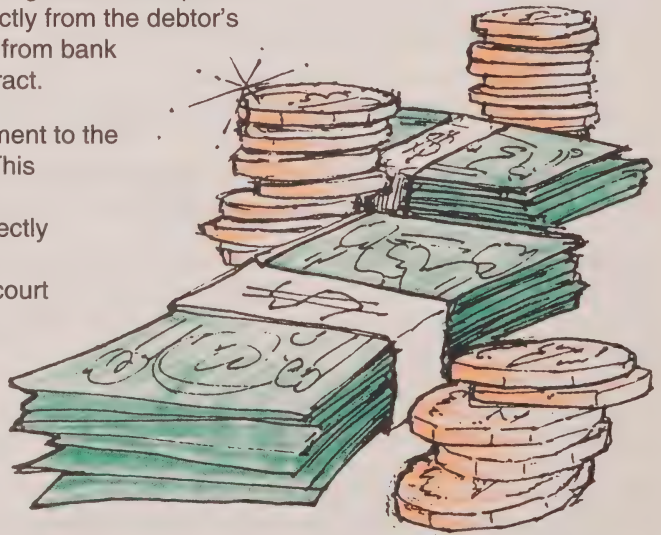
### 1. NOTICE OF GARNISHMENT

If a court has ruled in your favour and you have not received payment, you can seize money owed to the debtor by someone else. This is called **GARNISHMENT**.

If you instruct the court to issue a notice of garnishment, part of the debtor's wages may be obtained directly from the debtor's employer. Other funds can be garnished from bank accounts or money owed through a contract.

The court will send the notice of garnishment to the person who owes money to the debtor. This person is called the **GARNISHEE**. The garnishee then has to make payment directly to the court office. The court sends the payment to the creditor, after deducting court costs. This court fee does not affect the total owed to the creditor by the debtor.

Before a notice of garnishment is issued, you as the creditor first have to file a sworn statement (AFFIDAVIT) with the court where the debtor lives or carries on business. This affidavit must contain the following information:





- A. The date of the judgment or order and the amount awarded to the creditor;
- B. The name of the Small Claims Court in which the judgment was made;
- C. The rate of postjudgment interest payable;
- D. The date and amount of any payment made since the order or judgment was made;
- E. The amount owed by the debtor, including postjudgment interest;
- F. A statement that the creditor believes that the garnishee does or will owe money to the debtor;
- G. Details of money owed by the garnishee if it is not for wages;
- H. The name and address of each person to whom a notice of garnishment is to be sent.

## 2. WRIT OF DELIVERY

In a case where the judge orders the defendant to return personal property to the plaintiff, the plaintiff can, after filing an affidavit that the personal property has not been returned, ask the court to issue a **WRIT OF DELIVERY** to the court enforcement officer. This writ gives that officer the authority to seize the property named in the court order and return it to the plaintiff. If the property cannot be found, the plaintiff can ask the court by way of a notice of motion for an order directing the court enforcement officer to seize other personal property belonging to the defendant.

## 3. SEIZURE OF PERSONAL PROPERTY

If a debtor does not pay a court order to meet his or her debt, the creditor can act to have the court take legal possession of the debtor's property (**SEIZURE**) and sell it to satisfy the judgment.

Before the court can issue a **WRIT OF SEIZURE AND SALE OF PERSONAL PROPERTY**, the court must receive written instructions to do so from the creditor and a statement of the balance of money owing. The writ can then be given to the court enforcement officer, who will seize and hold the property of the debtor for auction.

Before legal possession can be taken of the debtor's property, the following must occur:

- ☐ The creditor must give the court specific instructions to take possession of the property;
- ☐ The creditor should ensure that the items to be seized are owned solely by the debtor;
- ☐ The creditor must deposit enough funds with the court to cover the costs of removal and storage of the items to be seized as well as the cost of publishing notice of the seizure. These costs will be added to the amount owing by the debtor.

Goods or property seized by the court enforcement officer have to be sold at public auction and it is easier to sell items that are free of any other legal claims (**LIENS OR SECURITY INTERESTS**). Certain goods, up to a certain value, cannot be seized. These include clothing, furniture, utensils, tools and home implements.

At any time up to the sale of the seized items, the debtor can prevent the sale by paying the court the amount of the judgment, plus costs and interest. The debtor can also ask the court to have the seizure postponed or to pay the judgment in instalments.

## 4. WRIT OF SEIZURE AND SALE OF LAND

A creditor can request that the court issue a **WRIT OF SEIZURE AND SALE OF LAND** to the sheriff of a county or district where the debtor owns land. This may prevent the debtor from selling or purchasing any land until the judgment is paid.

## 5. EXAMINATION OF THE DEBTOR

Before the court can issue a notice requiring the debtor to come to court for an **examination of the debtor**, the creditor must complete a sworn statement (**AFFIDAVIT**) containing all the information listed from "A" to "E" in the affidavit described in the garnishment section of this booklet.

After the creditor has prepared this **AFFIDAVIT**, the court office will issue the notice requiring the debtor to come to court. At this hearing, the debtor's financial situation will be reviewed to determine their ability to pay. After the hearing, the court may order the debtor to pay the judgment in full or by instalments, or may delay the payment for a period of time if the court believes the debtor is unable to pay at that time.

The notice of examination must be issued in the Small Claims Court where the debtor lives or carries on business. If the debtor has moved and the creditor knows the new address, the court staff will help determine the proper court in which to issue the notice of examination and to transfer the judgment if necessary.

## 6. WARRANTS

If the debtor fails to attend an examination hearing and the court is satisfied that the failure to attend is wilful, or if the debtor attends and fails to answer questions, the court may order that the debtor be sent to jail for a specified period not exceeding forty days for his or her contempt. If this occurs, it will be necessary for you as the creditor to instruct the court in writing to enforce the warrant. You may also have to supply the court with additional information, such as the debtor's date of birth, to enable the police to properly identify the debtor and enforce the warrant.

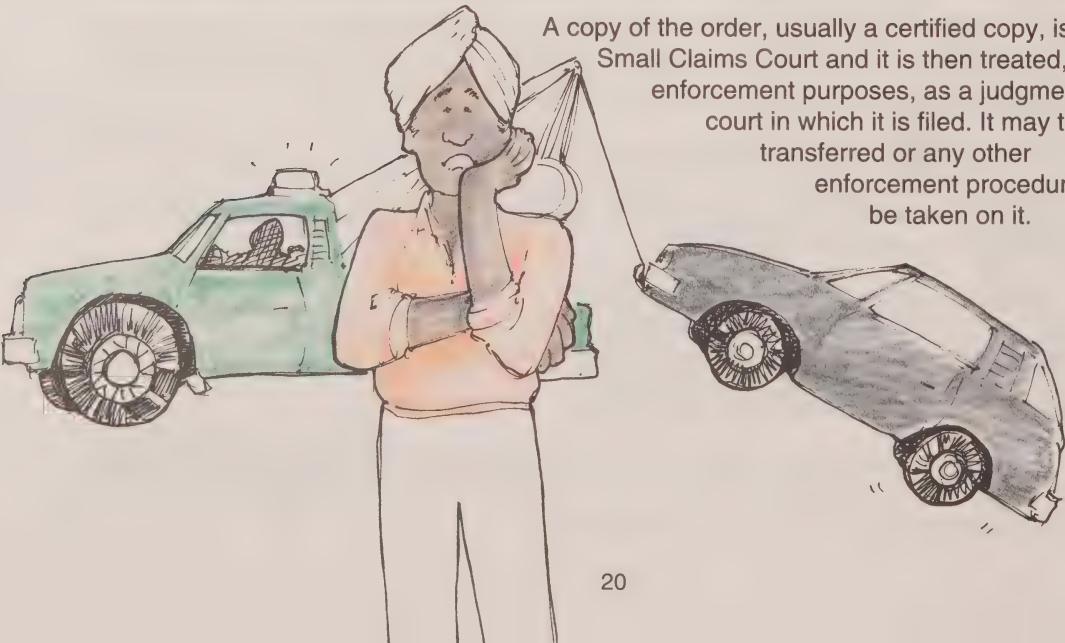
A warrant remains in force for a period of six months from the date of its issue. A warrant may be renewed, prior to its expiry, for another six months by order of the court.

## 7. ENFORCEMENT OF ORDERS OF BOARDS, TRIBUNALS, AGENCIES OR OTHER COURTS

Where the law permits, the orders of some boards, tribunals and agencies, as well as other levels of court, can be enforced in the Small Claims Court.

Examples of laws that allow orders to be enforced by Small Claims Court include: Rent Control Act, Employment Standards Act, Line Fences Act and Provincial Offences Act.

A copy of the order, usually a certified copy, is filed in Small Claims Court and it is then treated, for enforcement purposes, as a judgment of the court in which it is filed. It may then be transferred or any other enforcement procedures may be taken on it.





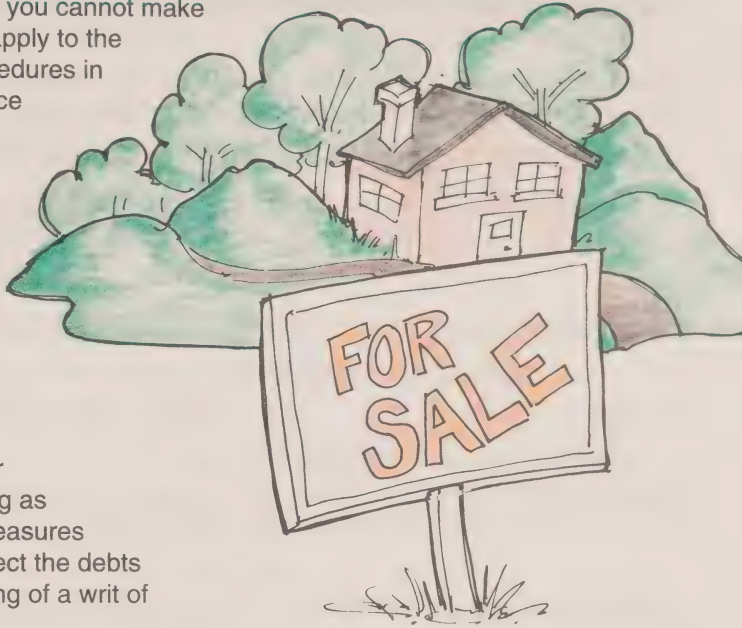
# INSTALMENT PAYMENTS AND THE CONSOLIDATION ORDER: PROTECTION & PLANNED PAYMENTS FOR THE DEBTOR

If a judgment is made against you, and you cannot make immediate payment, you may wish to apply to the court for payment by instalments. Procedures in this respect vary throughout the province and you should contact the court office to find out the procedures in your area.

A consolidation order is a process which can be undertaken by a person who has more than one outstanding Small Claims Court judgment against them. A debtor in this situation can apply to the court for an order which would combine the judgment debts and set up a schedule of repayment for all creditors named in the order. As long as these payments are made, no other measures can be taken against the debtor to collect the debts included in the order, except for the filing of a writ of seizure and sale of land.

If you think a consolidation order would be helpful for you and wish to obtain one, apply to the Small Claims Court division where you live. You will have to file a sworn statement (AFFIDAVIT) listing the judgments against you, your debts, your income from all sources and your family support obligations.

The court will schedule a hearing. You have to send notice of the hearing and a copy of your affidavit to all of your judgment creditors at least seven days before the hearing date. If mailed, the notice must be sent at least 12 days before the date. A judge or referee will hear evidence about your income and expenses. As a result of the hearing, the judge may make an order combining your debts and ordering you to pay the court in instalments.



# WHAT DO THESE WORDS MEAN?

These are the terms you will hear and use as you prepare for and go to Small Claims Court. Knowing and understanding them can be helpful to you.

<b>ADJOURNMENT:</b>	Court order to postpone a hearing to a future date.
<b>AFFIDAVIT:</b>	A written statement or declaration of facts, sworn or affirmed to be true. Swearing or affirmation takes place before an official having the authority to administer oaths.
<b>CAUSE OF ACTION:</b>	The fact or facts which give a person the legal right to begin a lawsuit.
<b>CLAIM:</b>	A lawsuit or the document stating what is being claimed in a lawsuit.
<b>CLERK:</b>	The court official to whom certain powers and duties are given by law. These powers and duties may be exercised or performed by one or more staff in the court offices.
<b>COUNTERCLAIM:</b>	A claim introduced by the defendant against the plaintiff in the original claim, and arising out of the same circumstances.
<b>COURT ENFORCEMENT OFFICER:</b>	Court official (formerly known as the BAILIFF) responsible for enforcing the terms of an order or judgment when instructed by the court.
<b>COURT PROCESS OFFICER:</b>	Court official (formerly known as the BAILIFF) responsible for delivering legal documents, such as a claim or summons to witness.
<b>CREDITOR:</b>	The person to whom money is owing because of a judgment or order.
<b>DEBTOR:</b>	The person who owes money due to a judgment or order.
<b>DEFAULT JUDGMENT:</b>	A judgment that is issued against a defendant who has failed to file a defence.
<b>DEFENDANT:</b>	The person against whom a claim is made.
<b>GARNISHEE:</b>	The person or corporation who owes money to a debtor (such as an employer or a bank).
<b>GARNISHMENT:</b>	The procedure by which a creditor can collect on a judgment or order by claiming money owed to the debtor by a third party. For example, the creditor can get a direction requiring the debtor's employer or bank to pay money owed to the debtor, directly to the court.
<b>HEARSAY:</b>	A statement or document made by someone who is not in court.
<b>JUDGMENT:</b>	A decision made by a judge resolving a dispute.



**LITIGATION  
GUARDIAN:**

A person who acts on behalf of a minor or a mentally incompetent person in a lawsuit. Where the plaintiff or defendant is a minor, the litigation guardian will normally be a parent. However, the litigation guardian must have no interest in the lawsuit that conflicts with the interest of the person he or she represents.

**NOTICE OF MOTION:**

Written notice by one party to the other party in a lawsuit about an intention to argue a particular issue before a judge.

**NOTICE OF TRIAL  
OR PRE-TRIAL:**

A formal notice issued by the court to all parties in a claim stating the date, time and place a trial or pre-trial is to take place.

**ORDER:**

A direction of a judge made in a case.

**PLAINTIFF:**

The person who brings a claim against another person, company or organization.

**REFEREE:**

Court official who may hear pre-trial hearings. In many cases, he/she assists in working out a scheme of debtor's payments to the creditor and may assist in the obtaining of consolidation orders.

**RESERVE JUDGMENT:**

To postpone a decision until all facts have been fully considered or a point of law reviewed.

**SEIZE, SEIZURE:**

To take legal possession of property; the act of doing so.

**SERVE, SERVICE:**

To deliver a legal document to a person; the act of doing so.

**SET OFF:**

A debt the plaintiff owes the defendant which may be deducted from the amount the court finds the plaintiff is owed.

**SUMMONS TO  
WITNESS:**

A legal document from the court requiring a witness to appear in court at a specific time.

**THIRD PARTY CLAIM:**

A claim filed by a defendant against another party other than the plaintiff whom the defendant believes is responsible for the plaintiff's claim.

**WRIT:**

Written instructions to a court officer to enforce a court order.

## WHERE CAN I GET MORE INFORMATION?

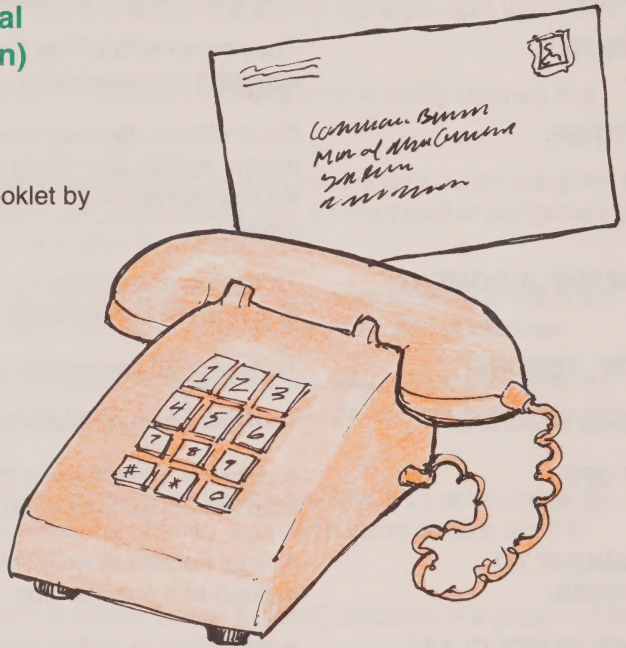
This booklet has been developed to help you understand the basic workings of Small Claims Court. It can help you prepare yourself properly and present your case effectively.

If you need more information on Small Claims Court, contact your local court office listed in the Blue Pages of your telephone book under:

**Ontario Government  
Ministry of the Attorney General  
Ontario Court (General Division)  
Small Claims Court**

You can get additional copies of this booklet by writing or phoning:

**Communications Branch  
Ministry of the Attorney General  
1st Floor  
720 Bay Street  
Toronto, Ontario M5G 2K1  
Telephone: (416) 326-2200**









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